IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Bail Appl..No. 3896 of 2007()

C.C.NO.1238/2004 OF J.F.C.M, CHANGANACHERRY NOW PENDING AS L.P.NO.104/05 OF JFCM, CHANGANACHERRY

.....

: PETITIONER/ACCUSED

KUNJUMON, S/O.ALIKUNJU, AGED 52 YEARS,
SAFA MANZIL, PERUNNA EAST, CHANGANACHERRY.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3896 of 2007

Dated this the 28th day of June, 2007

ORDER

Petitioner is the 1st accused in a crime, where the offence alleged is under Section 420 read with 34 I.P.C. There were originally two accused persons. Investigation was completed. Final report was filed. Cognizance was taken. The petitioner was not available for trial and therefore the case against him has been transferred to the list of Long Pending Cases. Warrants issued by the learned Magistrate to procure his presence are chasing him. In these circumstances, the petitioner has come to this Court with a prayer that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in these cases.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances

under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. The learned counsel for the petitioner submits that the petitioner is making attempts to settle the dispute. If he so settles the dispute, the offence being compoundable, the petitioner can apply for composition and if such application for composition is filed, the same must also be considered by the learned Magistrate expeditiously.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-